



PRECEDENT REGARDING  
CLAIMS OF ATTORNEY-  
CLIENT PRIVILEGE IN  
CONGRESSIONAL  
INVESTIGATIONS

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In congressional investigations, government agencies and private parties sometimes assert an attorney-client or attorney work-product privilege as a basis for withholding information. As a matter of discretion, congressional committees can choose to honor these common law privileges, but they do not need to do so. As the Congressional Research Service has [written](#),<sup>1</sup> “the acceptance of a claim of attorney-client or work product privilege rests in the sound discretion of a congressional committee regardless of whether a court would uphold the claim in the context of litigation.” The only privileges that Congress must recognize are constitutional ones, such as the Fifth Amendment right not to answer incriminating questions [see note 1].

Sometimes parties that assert an attorney-client or work-product privilege will refuse to turn the documents over voluntarily. One reason can be their concern that voluntary production could be interpreted as a waiver of the privileges in other contexts. A subpoena is usually sufficient to overcome concerns about a waiver. If the party holding the documents is the lawyer, a subpoena combined with the threat of enforcement should suffice. The DC Bar has issued an [opinion](#)<sup>2</sup> stating that while a “lawyer has a professional responsibility to seek to quash or limit the subpoena on all available, legitimate grounds to protect confidential documents and client secrets,” the lawyer may provide the material if “the Congressional subcommittee overrules these objections, orders production of the documents and threatens to hold the lawyer in contempt absent compliance with the subpoena.”

One approach that some committees have successfully used when faced with an assertion of attorney-client or work-product privilege is to arrange for an *in camera* inspection of the documents to determine which, if any, of the documents at issue the committee will insist be produced. From the committee’s perspective, this step avoids the need for the committee to initiate contempt or other enforcement procedures for documents that are not essential to the investigation; from the document holder’s perspective, it can protect many sensitive documents from production. In fact, this accommodation process can obviate the need for any enforcement proceeding if the document holder decides to turn over the materials identified by the committee rather than face potential contempt.

Additional considerations can arise when a federal agency or the White House is involved because the President could invoke executive privilege to protect the documents from production. If the President

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<sup>1</sup> Congressional Research Service, *Investigative Oversight: An Introduction to the Law, Practice and Procedure of Congressional Inquiry*, page 35, (April 7, 1995) (CRS Report 95-464).

<https://web.archive.org/web/20210705182543/https://fas.org/sgp/crs/misc/95-464.pdf>

<sup>2</sup> District of Columbia Bar, *Ethics Opinion 288: Compliance with Subpoena from Congressional Subcommittee to Produce Lawyer’s Files Containing Client Confidences or Secrets* (February 1999).

<https://web.archive.org/web/20220702205948/https://www.dcb.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-288>

does so, the attorney-client privilege issue will be subsumed into a dispute over the validity of the President's executive privilege claim.

There are many examples of instances when congressional committees have obtained attorney-client and work-product documents from both private parties and the executive branch, as the examples below illustrate.

## EXAMPLES

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### Examples of Private Party Production Involving Attorney-Client Communications

- In October and November 2009, Bank of America [produced](#)<sup>3</sup> more than 1,000 privileged documents to the House Committee on Oversight and Government Reform in response to the Committee's request for records of legal advice regarding Bank of America's merger with Merrill Lynch during the 2008 financial crisis. The Bank initially [sought](#)<sup>4</sup> to assert attorney-client privilege in response to the Committee's inquiries and document requests, but the Committee rejected the assertion and "Bank of America [acknowledged](#)<sup>5</sup> that Congress had the authority to disregard attorney-client privilege" and produced the materials.
- In 2007, the House Committee on Oversight and Government Reform [sought documents](#)<sup>6</sup> from contractor Blackwater USA as part of the Committee's inquiry into the performance and accountability of private security contractors in the Iraq war. Blackwater initially withheld 15 documents, claiming attorney-client privilege concerns, and continued this posture even after the Committee issued a subpoena for these materials, but ultimately produced the documents after the Committee threatened a vote to hold the company in contempt of Congress.

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<sup>3</sup> Bloomberg Law Reports – Banking & Finance, *Congressional Investigations: Bank of America and Recent Developments in Attorney-Client Privilege*, (Vol., 3, No. 12, 2010).

<https://web.archive.org/web/20220218191835/https://www.cov.com/-/media/files/corporate/publications/2010/12/congressional-investigations---bank-of-america-and-recent-developments-in-attorney-client-privile.pdf>

<sup>4</sup> The New York Times, *Congress Presses for Details From Bank of America in Talks*, (September 20, 2009).

<https://web.archive.org/web/20220609003511/https://www.nytimes.com/2009/09/21/business/21bank.html>

<sup>5</sup> The New York Times, *Congress Presses for Details From Bank of America in Talks*, (September 20, 2009).

<https://web.archive.org/web/20220609003511/https://www.nytimes.com/2009/09/21/business/21bank.html>

<sup>6</sup> Majority Staff, House Committee on Oversight and Government Reform, *Private Military Contractors in Iraq: An Examination of Blackwater's Actions in Fallujah* (September 2007).

<https://wayback.archive-it.org/4949/20141031192816/http://oversight-archive.waxman.house.gov/documents/20070927104643.pdf>

- On June 24, 1998, the House Committee on Commerce [approved the report](#)<sup>7</sup> of the Subcommittee on Oversight and Investigations [finding](#)<sup>8</sup> Franklin Haney in contempt for refusing to comply with subpoenas for materials as part of its investigation into whether improper or illegal influence affected a planned relocation of the Federal Communications Commission (FCC). Haney claimed that attorney-client privilege and bar association rules prevented him from disclosing this information to Congress. Within weeks of the Committee contempt vote, Haney [produced the documents at issue](#)<sup>9</sup> to the Committee. Subsequently, in February 1999, the Legal Ethics Committee of the District of Columbia Bar issued a related opinion [finding](#)<sup>10</sup> that, while a “lawyer has a professional responsibility to seek to quash or limit the subpoena on all available, legitimate grounds to protect confidential documents and client secrets,” the lawyer may provide the material if “the Congressional subcommittee overrules these objections, orders production of the documents and threatens to hold the lawyer in contempt absent compliance with the subpoena.”
- On June 6, 1997, Chairman Fred Thompson of the Senate Committee on Government Affairs [overruled](#)<sup>11</sup> an assertion of attorney-client privilege by the Democratic National Committee (DNC) regarding discussions between DNC officials and White House lawyers during the Committee’s investigation of campaign fundraising and spending practices during the 1996 elections. As a result, “DNC General Counsel Joseph Sandler provided the Committee with critical testimony regarding the Vice President’s phone calls.”
- On December 12, 1985, the Subcommittee on Asian and Pacific Affairs of the House Foreign Affairs Committee [found](#)<sup>12</sup> Ralph and Joseph Bernstein in contempt for refusing to answer

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<sup>7</sup> House Committee on Commerce, *Congressional Proceedings Against Mr. Franklin L. Haney for Withholding Subpoenaed Documents*, Page 3, (October 7, 1998) (H. Report 105-792).

<https://web.archive.org/web/20220705185128/https://www.congress.gov/105/crpt/hrpt792/CRPT-105hrpt792.pdf>

<sup>8</sup> House Committee on Commerce, *Congressional Proceedings Against Mr. Franklin L. Haney for Withholding Subpoenaed Documents*, Page 16, (October 7, 1998) (H. Report 105-792).

<https://web.archive.org/web/20220705185128/https://www.congress.gov/105/crpt/hrpt792/CRPT-105hrpt792.pdf>

<sup>9</sup> House Committee on Commerce, *Congressional Proceedings Against Mr. Franklin L. Haney for Withholding Subpoenaed Documents*, Page 3, (October 7, 1998) (H. Report 105-792).

<https://web.archive.org/web/20220705185128/https://www.congress.gov/105/crpt/hrpt792/CRPT-105hrpt792.pdf>

<sup>10</sup> District of Columbia Bar, *Ethics Opinion 288: Compliance with Subpoena from Congressional Subcommittee to Produce Lawyer’s Files Containing Client Confidences or Secrets* (February 1999).

<https://web.archive.org/web/20220702205948/https://www.dcb.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-288>

<sup>11</sup> Senate Committee on Governmental Affairs, *Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaign*, Volume 1, (March 10, 1998) (S. Report 105-167).

<https://web.archive.org/web/20220128051410/https://www.congress.gov/105/crpt/srpt167/CRPT-105srpt167-pt1.pdf>

<sup>12</sup> Congressional Record - House, *Proceedings Against Ralph Bernstein and Joseph Bernstein*, Pages 3028-3062, (February 27, 1986).

questions on the basis of attorney-client privilege regarding their work on behalf of President Ferdinand Marcos of the Philippines and his wife, Imelda Marcos, as part of the Subcommittee's investigation of vast holdings by the Marcoses in the United States and the implications of these investments for U.S. foreign policy and the U.S. aid program for the Philippines. The full House [cited](#)<sup>13</sup> the brothers for contempt the following month. The Bernsteins subsequently relented and [testified](#)<sup>14</sup> before the Subcommittee on April 9, 1986.

- In 1983, the Subcommittee on Oversight and Investigations of the House Energy and Commerce Committee sought testimony and documents from John Fedders, Director of the Securities and Exchange Commission's (SEC) Division of Enforcement, about his private practice work prior to his government service. Fedders initially sought to assert attorney-client privilege in response to the Subcommittee's requests. Fedders subsequently dropped his claim of attorney-client privilege and [agreed](#)<sup>15</sup> to testify before the Subcommittee. In a separate instance, Citicorp [produced](#)<sup>16</sup> documents sought by the Subcommittee after initially seeking to assert attorney-client privilege. The Subcommittee then published a committee print of Memoranda Opinions of the American Law Division of the Library of Congress analyzing these situations and [finding](#)<sup>17</sup> that the attorney-client privilege "is not available before Congressional committees."
- On February 2, 1934, the Senate Special Committee on Investigation of Air Mail and Ocean Mail Contracts [ruled](#)<sup>18</sup> against an assertion of privilege by an attorney, William P. MacCracken, Jr.,

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<https://web.archive.org/web/20230227182832/https://www.govinfo.gov/content/pkg/GPO-CRECB-1986-pt3/pdf/GPO-CRECB-1986-pt3-1-1.pdf>

<sup>13</sup> Los Angeles Times, *Covered Up Huge Deal for Marcoses, N.Y. Agents Say* (April 20, 1986).

<https://web.archive.org/web/2020111231551/https://www.latimes.com/archives/la-xpm-1986-04-10-mn-3063-story.html>

<sup>14</sup> Los Angeles Times, *Covered Up Huge Deal for Marcoses, N.Y. Agents Say* (April 20, 1986).

<https://web.archive.org/web/2020111231551/https://www.latimes.com/archives/la-xpm-1986-04-10-mn-3063-story.html>

<sup>15</sup> UPI, *John Fedders, The Enforcement Chief of the Securities...* (June 1, 1983).

<https://web.archive.org/web/20220522173305/https://www.upi.com/Archives/1983/06/01/John-Fedders-the-enforcement-chief-of-the-securities-and/5052423288000/>

<sup>16</sup> Letter from Chairman John D. Dingell to Members of the Committee on Energy and Commerce (June 3, 1983).

<https://web.archive.org/web/20230227194901/https://babel.hathitrust.org/cgi/pt?id=uc1.31210024923268&view=1up&seq=3>

<sup>17</sup> Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, *Attorney-Client Privilege Memoranda Opinions of the American Law Division, Library of Congress*, (Com. Print 98-1) (June 1983).

<https://web.archive.org/web/20230227215348/https://babel.hathitrust.org/cgi/pt?id=uc1.31210024923268&view=1up&seq=4>

<sup>18</sup> Senate Select Committee on Investigation of Air Mail and Ocean Mail Contracts, *Investigation of Air Mail and Ocean Mail Contracts, Part 4* (January 9 to January 18, 1934)

<https://web.archive.org/web/20230227220535/https://babel.hathitrust.org/cgi/pt?id=umn.31951d011149995&view=1up&seq=790>

who refused to provide documents the Committee had requested regarding his clients' mail contracts. Congress later found MacCracken in contempt for allowing some of the documents that were under subpoena to be destroyed. The Supreme Court [affirmed](#)<sup>19</sup> the contempt.

## Examples of Executive Branch Providing Information Relating to Attorney-Client Communications

- In 2001, the House Committee on Government Reform and Oversight [heard testimony](#)<sup>20</sup> from Beth Nolan, former White House Counsel, and Bruce Lindsey, former Deputy White House Counsel, regarding President Clinton's pardon of Marc Rich, including her conversations with the President, after President Clinton [informed the Committee](#)<sup>21</sup> he would not assert executive privilege.
- In 2000, as part of the House Committee on Government Reform's investigation of the White House email system, the White House [provided](#)<sup>22</sup> the House Committee on Government Reform and Oversight a 1994 memorandum to Vice President Gore from a counsel to the Vice President, and former counsel to the Vice President Todd Campbell [provided an interview](#)<sup>23</sup> to the Committee regarding the evolution of the email system in the Vice President's office.
- In 1997, the White House [produced notes](#)<sup>24</sup> taken by an associate White House Counsel to the House Committee on Government Reform and Oversight for its inquiry into alleged campaign finance improprieties.

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<sup>19</sup> *Jurney v. MacCracken*, 294 U.S. 125 (1935).

<https://web.archive.org/web/20230207170454/https://supreme.justia.com/cases/federal/us/294/125/>

<sup>20</sup> House Committee on Government Reform, *The Controversial Pardon of International Fugitive Marc Rich*, (February 8, and March 1, 2001) (Serial 107-11).

<https://web.archive.org/web/20220817073622/https://www.govinfo.gov/content/pkg/CHRG-107hhrg75593/html/CHRG-107hhrg75593.htm>

<sup>21</sup> Chicago Tribune, *Clinton Allows Top Aides to Testify about Pardons* (February 28, 2001).

<https://web.archive.org/web/20210314174611/https://www.chicagotribune.com/news/ct-xpm-2001-02-28-0102280230-story.html>

<sup>22</sup> House Committee on Government Reform, *The Failure to Produce White House E-Mails: Threats, Obstruction, and Unanswered Questions*, Volume 1, page 636 (December 4, 2000) (H. Report 106-1023).

<https://web.archive.org/web/20220331030724/https://www.congress.gov/106/crpt/hrpt1023/CRPT-106hrpt1023-vol1.pdf>

<sup>23</sup> House Committee on Government Reform, *The Failure to Produce White House E-Mails: Threats, Obstruction, and Unanswered Questions*, Volume 1, page 18 (December 4, 2000) (H. Report 106-1023).

<https://web.archive.org/web/20220331030724/https://www.congress.gov/106/crpt/hrpt1023/CRPT-106hrpt1023-vol1.pdf>

<sup>24</sup> Minority Staff – Special Investigations Divisions, Committee on Government Reform, *Congressional Oversight of the Clinton Administration* (January 17, 2006).

<https://wayback.archive-it.org/4949/20141031200116/http://oversight-archive.waxman.house.gov/documents/20060117103516-91336.pdf>

- On December 19, 1995, the Special Committee to Investigate Whitewater Development Corporation and Other Matters [adopted](#)<sup>25</sup> a resolution directing the Senate Legal Counsel to bring a civil action to enforce the Committee’s subpoena of William H. Kennedy, III, former Associate Counsel to the President, to produce notes that he took at a meeting attended by lawyers and White House officials to discuss Whitewater and related matters. The primary basis for refusing to produce the notes was attorney-client privilege. On December 20, 1995, the full Senate [voted](#)<sup>26</sup> to approve the resolution to enforce the subpoena. On December 21, 1995, the White House [dropped](#)<sup>27</sup> the attorney-client privilege claim and produced the notes.
- On July 9, 1991, the Subcommittee on Conservation, Credit, and Rural Development of the House Agriculture Committee sought legal opinions from the Department of Agriculture regarding the suspension of the rural telephone lending programs of the Rural Electrification Administration and the Rural Telephone Bank. After initially resisting production of the documents based on assertions of attorney-client privilege, the Department [provided](#)<sup>28</sup> the legal memoranda to the Subcommittee. As a result of this dispute, the Committee subsequently [published](#)<sup>29</sup> a document outlining the applicability of the attorney-client privilege to congressional investigations.

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<sup>25</sup> Special Committee to Investigate Whitewater Development Corporation and Related Matters, *Refusal of William H. Kennedy, III, to Produce Notes Subpoenaed by the Special Committee to Investigate Whitewater Development Corporation and Related Matters*, p. 11, (December 19, 1995) (S. Report 104-19).

<https://web.archive.org/web/20220121071707/https://www.congress.gov/104/crpt/srpt191/CRPT-104srpt191.pdf>

<sup>26</sup> The Washington Post, *Senate Votes to Enforce Subpoena for White House Whitewater Notes* (December 21, 1995).

<https://web.archive.org/web/20230227230735/https://www.washingtonpost.com/archive/politics/1995/12/21/senate-votes-to-enforce-subpoena-for-white-house-whitewater-notes/7a3d4bfc-be91-4dd8-86c3-68afad047497/>

<sup>27</sup> Special Committee to Investigate Whitewater Development Corporation and Related Matters, *Progress of the Investigation into Whitewater Development Corporation and Related Matters and Recommendation for Future Funding*, page 17 (January 22, 1996) (S. Report 104-204). <https://www.congress.gov/104/crpt/srpt204/CRPT-104srpt204.pdf#page=20>

<sup>28</sup> House Committee on Agriculture, Subcommittee on Conservation, Credit, and Rural Development, *Attorney-Client Privilege and the Right of Congressional Access to Documents for Oversight Purposes in the Case of the Suspension of the Telephone Loan Programs by the U.S. Department of Agriculture* (July 1991). <https://web.archive.org/web/20230227231153/https://babel.hathitrust.org/cgi/pt?id=umn.319510030893440&view=1up&seq=2>

<sup>29</sup> House Committee on Agriculture, Subcommittee on Conservation, Credit, and Rural Development, *Attorney-Client Privilege and the Right of Congressional Access to Documents for Oversight Purposes in the Case of the Suspension of the Telephone Loan Programs by the U.S. Department of Agriculture* (July 1991). <https://web.archive.org/web/20230227231153/https://babel.hathitrust.org/cgi/pt?id=umn.319510030893440&view=1up&seq=2>

- On June 8, 1987, Bretton Sciaroni, Counsel to the President’s Intelligence Oversight Board, [testified](#)<sup>30</sup> before the House Select Committee to Investigate Covert Arms Transactions with Iran and Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition regarding a classified legal memo he had written arguing that a statute prohibiting aid to the Contras did not cover the National Security Council. President Reagan had [waived](#)<sup>31</sup> executive privilege regarding the investigation.
- In 1980, President Carter [waived](#)<sup>32</sup> executive privilege to allow his White House Counsel, Lloyd Cutler, to testify before the Senate Judiciary Committee’s Subcommittee to Investigate Activities of Individuals Representing the Interests of Foreign Governments as part of an investigation into the business dealings of Billy Carter, the President’s brother. Cutler provided the Subcommittee with [two memos](#)<sup>33</sup> that he had written to the President about the matter as well, which are part of the public hearing record.
- On July 7, 1973, President Nixon [agreed](#)<sup>34</sup> “to permit ‘the unrestricted testimony of present and former White House staff members’” before the Senate Select Committee on Presidential Campaign Activities for the Committee’s inquiry into the break-in of the Democratic Party campaign headquarters and other alleged unethical conduct in the 1972 presidential campaign. The President had initially objected on executive privilege grounds to the Committee’s request for testimony from former White House Counsel John Dean. Ultimately Dean testified in this Senate inquiry as well as the subsequent impeachment hearings on related matters by the House Committee on the Judiciary.

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<sup>30</sup> House Select Committee to Investigate Covert Arms Transactions with Iran and Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition, *Joint Hearing of the Iran-Contra Investigation* (June 2, 3, 4, 5, 8 and 9, 1987).

<https://web.archive.org/web/20230227231440/https://babel.hathitrust.org/cgi/pt?id=mdp.39015039063626&view=1up&seq=397>

<sup>31</sup> Pepperdine Law Review, *Boland in the Wind: The Iran-Contra Affair and the Invitation to Struggle*, Volume 17 Issue. 2 (1990).

<https://web.archive.org/web/20200321232320/https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1701&context=plr>

<sup>32</sup> Subcommittee to Investigate the Activities of Individuals Representing the Interests of Foreign Governments, Senate Committee on the Judiciary *Inquiry into the Matter of Billy Carter and Libya*, Volume 11, (August 4, 6, 19, 20, 21, 22; September 4, 5, 9, 10, 16, 17 and October 2, 1980) (S. Hearing 95-85).

<https://web.archive.org/web/20230227231742/https://babel.hathitrust.org/cgi/pt?id=mdp.39015083099203&view=1up&seq=673>

<sup>33</sup> Subcommittee to Investigate the Activities of Individuals Representing the Interests of Foreign Governments, Senate Committee on the Judiciary *Inquiry into the Matter of Billy Carter and Libya*, Volume 11, (August 4, 6, 19, 20, 21, 22; September 4, 5, 9, 10, 16, 17 and October 2, 1980) (S. Hearing 95-85).

<https://web.archive.org/web/20230227231742/https://babel.hathitrust.org/cgi/pt?id=mdp.39015083099203&view=1up&seq=673>

<sup>34</sup> Presidential Studies Quarterly, *White House Aides Testifying before Congress*, Volume 27, No. 1 (Winter 1997.)

<https://web.archive.org/web/20230227232214/https://www.jstor.org/stable/27551711?read-now=1&seq=3>



## Example of Court Order to Produce Documents under the Crime-Fraud Exception to the Attorney-Client Privilege

In a civil action brought in 2022 by private attorney John Eastman against the House Select Committee to Investigate the January 6<sup>th</sup> Attack on the United States Capitol, a federal district judge [ruled](#)<sup>35</sup> that the crime-fraud exception to the attorney-client privilege applied to certain documents the Committee sought. The crime-fraud exception applies in circumstances where a client consults the attorney for advice that will serve them “in the commission of a fraud or crime” and the communications “were sufficiently related to and made in furtherance of the crime.”<sup>36</sup> This case concerned a [subpoena](#)<sup>37</sup> from the Committee to Eastman’s former employer, Chapman University, for documents stored on the institution’s servers related to the 2020 election and the January 6<sup>th</sup> attack. Eastman [sued](#)<sup>38</sup> the Committee to prevent Chapman from complying, asserting that the documents sought were protected by attorney-client and work product privilege as he claimed to be serving as a lawyer for President Trump in the aftermath of the 2020 election. In a March 2022 ruling, the court concluded that an attorney-client relationship did exist between Eastman and President Trump, but that one of the documents sought was subject to the crime-fraud exception.<sup>39</sup> The court stated that former President Trump more likely than not “corruptly attempted to obstruct the Joint Session of Congress on January 6, 2021” and conspired to “defraud the United States by interfering with the election certification process.” The court further stated that one of the documents covered by the subpoena, a memo recommending that Vice President Pence reject electors during the counting of electoral votes in the January 6<sup>th</sup> joint session, furthered the criminal conduct at issue.<sup>40</sup> In subsequent rulings in [June 2022](#)<sup>41</sup> and [October 2022](#),<sup>42</sup> the court found additional documents to be subject to the crime-fraud exception.

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<sup>35</sup> *Eastman v. Thompson*, 594 F. Supp. 3d 1156, 1167 (C.D. Cal. 2022),

<https://web.archive.org/web/20230809222733/https://www.courtlistener.com/docket/62613089/john-c-eastman-v-bennie-g-thompson/>

<sup>36</sup> See *Eastman v. Thompson*, 594 F. Supp. 3d 1156, at 1188 (C.D. Cal. 2022).

<sup>37</sup> See *Eastman v. Thompson*, 594 F. Supp. 3d 1156, at 1174 (C.D. Cal. 2022).

<sup>38</sup> See *Eastman v. Thompson*, 594 F. Supp. 3d 1156, at 1174-75 (C.D. Cal. 2022). In this case, the Committee declined to assert the argument that it had discretion to reject attorney-client privilege claims, but made clear it reserved the right to assert this argument in other cases. Congressional Defendants’ Brief in Opposition to Plaintiff’s Privilege Assertions at 37 n.73, *Eastman v. Thompson*, No. 8:22-cv-00099-DOC-DFM (C.D. Cal. Mar. 8, 2022).

<sup>39</sup> *Eastman v. Thompson*, 594 F. Supp. 3d 1156, at 1176 (C.D. Cal. 2022).

<sup>40</sup> *Eastman v. Thompson*, 594 F. Supp. 3d 1156, at 1188, 1193-95 (C.D. Cal. 2022).

<sup>41</sup> *Eastman v. Thompson*, No. 8:22-cv-00099, at 26 (C.D. Cal. Jun. 7, 2022),

<https://web.archive.org/web/20240411170758/https://www.cacd.uscourts.gov/sites/default/files/Dkt%20356%2C%20Order%20Re%20Privilege%20of%20599%20Documents.pdf>

<sup>42</sup> *Eastman v. Thompson*, No. 8:22-cv-00099, 2022 U.S. Dist. LEXIS 192764, at \*21 (C.D. Cal. Oct. 19, 2022),

<https://web.archive.org/web/20240411170926/https://www.cacd.uscourts.gov/sites/default/files/Dkt.%20372%2C%20Order%20Re%20Privilege%20of%20Remaining%20Documents.pdf>. After this order, the court [denied](#) Dr.

Eastman’s [request](#) to reconsider its crime-fraud exception ruling or, in the alternative, to stay enforcement of the document disclosure order. *Eastman v. Thompson*, No. SA CV 22-00099, 2022 U.S. Dist. LEXIS 212911, at \*2 (C.D. Cal. Oct. 28, 2022). Eastman [appealed](#) to the Ninth Circuit to stay the order, but the Ninth Circuit [dismissed](#) the

## Note

1. In its decision in *Trump v. Mazars USA*, 591 U.S. \_\_\_ (2020), the Supreme Court stated that recipients of legislative subpoenas "have long been understood to retain common law and constitutional privileges with respect to certain materials, such as attorney-client communications and governmental communications protected by executive privilege." This statement is accurate with regard to constitutional privileges, but not with regard to common law privileges. The source that the Court cites for the attorney-client privilege is a Congressional Research Service report, *Congressional Investigations: Subpoenas and Contempt Power*, which does not actually support this proposition. The [portion of the report](#)<sup>43</sup> cited by the Court involves President Clinton eventually producing the subpoenaed materials to the congressional committee, and the author of that report [noted](#)<sup>44</sup> the proposition that "attorney-client privilege 'cannot be claimed as a matter of right before a legislative committee'" in another publication discussing this example.

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case as moot. *Eastman v. Thompson*, No. SA CV 22-00099, 2022 U.S. Dist. LEXIS 212911, at \*2 (C.D. Cal. Oct. 28, 2022).

<sup>43</sup> Congressional Research Service, *Congressional Investigations: Subpoenas and Contempt Power*, page 19, (April 2, 2003) (CRS Report RL31836).

<https://web.archive.org/web/20220122075833/https://sgp.fas.org/crs/misc/RL31836.pdf>

<sup>44</sup> Point of Order, *Mazars and Common Law Privileges Before Congress* (July 10, 2020).

<https://web.archive.org/web/20220218190449/https://www.pointoforder.com/2020/07/10/mazars-and-common-law-privileges-before-congress/>